

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LESTER JON RUSTON, #26834-177,)	
Plaintiff/Appellant,)	
)	
vs.)	3:04-CV-2568-G (BK)
)	
UNITED STATES OF AMERICA,)	
Defendant/Appellee.)	

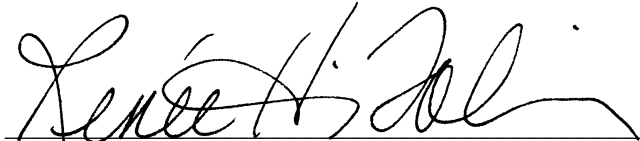
**RECOMMENDATION REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

On October 5, 2010, Plaintiff Lester John Ruston filed a notice of appeal and request to proceed *in forma pauperis* on appeal, which were automatically referred to the U.S. Magistrate Judge. Ruston seeks to appeal from the September 22, 2010 order denying his motion to vacate judgment.

Considering the record in this case, the court should deny Plaintiff's motion for leave to proceed *in forma pauperis* on appeal, and certify that his appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a)(3)(A). In support of this finding, the court should adopt and incorporate by reference the September 22, 2010, order denying Ruston's motion to vacate judgment. *See Baugh v. Taylor*, 117 F.3d 197, 201-202, n. 21 (5th Cir. 1997).

Since Ruston is civilly committed, the filing fee provisions of the Prisoner Litigation Reform Act do not apply to his appeal. *See Ruston v. Dallas County*, No. 07-10206, slip op. at 1 (5th Cir. Dec. 18, 2007) (unpublished per curiam).¹

SIGNED on October 15, 2010.

A handwritten signature in black ink, appearing to read "Renée H. Toliver", written over a horizontal line.

RENÉE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

¹ The U.S. Court of Appeals for the Fifth Circuit recently barred Ruston from filing an original proceeding or notice of appeal in the Fifth Circuit unless he seeks leave to file. *See In re Ruston*, Nos. 10-10638 and 10-10509 (5th Cir. Oct. 6, 2010).